Gurdeep Singh a/l Melkha Singh v Malaysian Airline System Bhd

HIGH COURT (IPOH) — CIVIL SUIT NO 22NCVC-201–09 OF 2011
CHE MOHD RUZIMA JC
27 MAY 2014

Insurance — Employee's insurance — Interpretation — Claimant a former pilot diagnosed with vertigo — Insurance claim for permanent disablement benefit governed by memorandum of understanding between employer and Malaysia Airline Pilots Association — Termination of claimant's employment — Whether claimant suffered from permanent disablement during employment — Whether permanent disablement result of accident

The plaintiff, a former pilot captain filed an action against defendant, his former employer, based on an insurance claim for 'permanent disablement' benefit totalling RM468,792 which was said to be governed by the memorandum of understanding ('MOU') entered into between Malaysia Airline Pilots' Association ('MAPA') and the defendant for the year 2007 to 2010. The terms and conditions of the plaintiff's employment were based on the 'Terms and Conditions of Employment of Pilots' contained in the MOU entered into between the defendant and MAPA and were reviewed and re-negotiated between the defendant and MAPA from time to time. The plaintiff was diagnosed with vertigo and due to the illness suffered by the plaintiff, the Department of Civil Aviation ('DCA') issued a notice to permanently ground the plaintiff and he was not allowed to fly as a pilot. Following that, the defendant issued a three months' notice to terminate the plaintiff's employment. The plaintiff ceased his employment with the defendant. The plaintiff was at all times on medical leave before the defendant issued the notice of termination and received salary up to six months in a year as provided for under MOU. The plaintiff was fully paid for his medical treatments in Malaysia and in London. The plaintiff had also received a total of RM430,000 for loss of license benefit. The issues that arose were whether the plaintiff suffered from a permanent disablement during his employment with the defendant; and in the event the plaintiff suffered from a permanent disablement during his employment with the defendant, whether the permanent disablement was result of an accident.

Held, dismissing the claim with costs of RM15,000:

(1) There was no definition of 'permanent disablement' in the MOU. The ordinary meaning of those words should help. For the purpose of interpreting cl 3 of the Second Schedule as a whole, the words used

should be given their natural and ordinary meaning. It was crystal clear that from the literal interpretation of the words used in the clause, the words 'death and permanent disablement' should relate only to personal accident as stated in the heading of the clause (see para 12).

(2) The plaintiff had made some improvement but the recovery could be slow and would need a long term treatment and rehabilitation. During the trial, the plaintiff was alert and able to communicate without any problem. He also moved around freely without aid but at certain time he would be in pain and sometime holding on his head. The plaintiff did not suffer from physical permanent disablement. However, the permanent disablement suffered by the plaintiff in this case should be viewed in a different context. The plaintiff used to be a pilot, so he needed his flying licence to fly again. Based on the medical report and the evidence adduced, he could not fly again. Therefore his situation suit the ordinary meaning of 'permanent' 'disablement'. Since the plaintiff's employment govern by the MOU, the words 'permanent disablement' in cl 3 of the MOU should be interpreted in relation to the plaintiff's employment ie plaintiff would be permanently disable to fly again (see para 13–14).

(3) In interpreting the contractual provision the entire clause should be read together, including the heading. Besides that, the court had to look at the individual clause and distinguish it with other clauses. The court even had to distinguish between the meaning of individual words and the meaning of a document as a whole. Heading of a clause is normally used as a catchword, or a form of identification, or inserted for convenience of reference. But sometime the heading can be used as guidance to ascertain the meaning of the clause. Therefore, the weight to be given to the heading of a clause depend on the construction of the provision in that particular clause (see para 18).

(4) The insurance was to insure the pilot from the death or permanent disablement suffered out of any personal accident. The insurance cover shall be on a 24 hour basis and this shows that personal accident can happen at any time. Further it provides that in certain situation the insurance will extend its coverage to the death or permanent disablement resulting from riots, civil commotion and war risks which had in nature, have resemblance to the personal accident. It was also pertinent to look at the provision of individual clause and distinguish it with other clauses to determine the intention of that particular individual clause. By analysing them, it will show that the plaintiffs interpretation of cl 3 of the Second Schedule will contradict with other provision of the Second Schedule of the MOU (see para 19–21).

[Bahasa Malaysia summary

Plaintif, bekas kapten juruterbang telah memfailkan tindakan terhadap defendan, bekas majikannya, berdasarkan tuntutan insurans untuk faedah 'permanent disablement' berjumlah RM468,792 yang dikatakan adalah dikawal oleh memorandum persefahaman ('MOU') yang dimasuki antara Persatuan Juruterbang Syarikat Penerbangan Malaysia ('MAPA') dan defendan bagi tahun 2007 hingga 2010. Terma dan syarat pekerjaan plaintif adalah berdasarkan 'Terms and Conditions of Employment of Pilots' yang terkandung dalam MOU yang masuki antara defendan dan MAPA dan telah disemak dan dirunding semula antara defendan dan MAPA dari masa ke semasa. Plaintif telah disahkan menghidap vertigo dan akibat penyakit yang dialami oleh plaintif, Jabatan Penerbangan Awam ('JPA') telah mengeluarkan notis untuk selamanya menggantung plaintif dan dia tidak dibenarkan terbang sebagai juruterbang. Berikutan itu, defendan telah mengeluarkan notis tiga bulan untuk menamatkan pekerjaan plaintif. Plaintif telah berhenti pekerjaannya dengan defendan. Plaintif pada setiap masa telah cuti sakit sebelum defendan mengeluarkan notis penamatan itu dan telah menerima gaji sehingga enam bulan dalam setahun sebagaimana diperuntukkan di bawah MOU itu. Plaintif telah dibayar penuh untuk rawatan perubatannya di Malaysia dan di London. Plaintif juga menerima sejumlah RM430,000 untuk kerugian faedah lesen. Isu-isu yang ditimbulkan adalah sama ada plaintif telah mengalami ketidakupayaan tetap semasa pekerjaannya dengan defendan; dan jika plaintif mengalami ketidakupayaan tetap semasa pekerjaannya dengan defendan, sama ada ketidakupayaan tetap itu adalah akibat kemalangan.

Diputuskan, menolak tuntutan dengan kos sebanyak RM15,000:

(1) Tiada definisi 'permanent disablement' dalam MOU itu. Maksud biasa perkataan-perkataan tersebut patut membantu. Bagi tujuan mentafsirkan fasal 3 kepada Jadual Kedua secara menyeluruh, perkataan-perkataan yang digunakan patut diberikan maksudnya yang semula jadi dan biasa. Adalah jelas bahawa daripada tafsiran harfiah perkataan-perkataan yang digunakan dalam fasal itu, perkataan-perkataan 'death and permanent disablement' patut hanya berkaitan kemalangan peribadi sebagaimana dinyatakan dalam kepala tajuk fasal itu (lihat perenggan 12).

(2) Plaintif telah membuat penambahbaikan tetapi pemulihan mungkin perlahan dan akan memerlukan rawatan dan pemulihan masa jangka panjang. Sepanjang perbicaraan, plaintif peka dan boleh berkomunikasi tanpa apa-apa masalah. Dia juga boleh bergerak bebas tanpa apa-apa bantuan tetapi ada ketikanya dia akan berada dalam kesakitan dan kadang kala memegang kepalanya. Plaintif tidak mengalami ketidakupayaan fizikal tetap. Walau bagaimanapun, ketidakupayaan tetap yang dialami oleh plaintif dalam kes ini patut dilihat dalam konteks

berbeza. Plaintif sebelum ini adalah seorang juruterbang, oleh itu lesen penerbangannya diperlukan untuk terbang semula. Berdasarkan laporan perubatan dan keterangan yang dikemukakan, dia tidak boleh terbang lagi. Oleh itu keadaannya sesuai dengan maksud biasa 'permanent disablement'. Oleh kerana pekerjaan plaintif dikawal oleh MOU itu, perkataan-perkataan 'permanent disablement' dalam fasal 3 MOU hendaklah ditafsirkan berkaitan dengan pekerjaan plaintif, iaitu plaintif tidak berupaya dengan kekal untuk terbang lagi (lihat perenggan 13–14).

(3) Dalam mentafsirkan peruntukan kontraktual keseluruhan fasal patut dibaca bersama, termasuklah kepala tajuk. Selain itu, mahkamah hendaklah melihat fasal secara berasingan dan membezakannya dengan fasal lain. Mahkamah juga perlu membezakan antara maksud perkataan-perkataan secara individu dan maksud dokumen secara keseluruhan. Kepala tajuk suatu fasal biasanya digunakan sebagai kata kunci, atau suatu bentuk pengecaman, atau dimasukkan untuk kemudahan rujukan. Namun kadang kala kepala tajuk boleh digunakan sebagai panduan untuk menentukan maksud fasal itu. Oleh itu, beban untuk diberikan kepada kepala tajuk suatu fasal itu bergantung kepada pembentukan peruntukan dalam fasal tertentu (lihat perenggan 18).

(4) Insurans itu adalah untuk menginsuranskan juruterbang itu daripada kematian atau ketidakupayaan kekal yang dialami akibat apa-apa kemalangan peribadi. Perlindungan insurans hendaklah pada asasnya 24 jam dan ini menunjukkan bahawa kemalangan peribadi itu boleh berlaku bila-bila masa. Selanjutnya ia memperuntukkan bahawa dalam keadaan tertentu insurans itu boleh meluaskan perlindungannya kepada kematian atau ketidakupayaan tetap akibat daripada rusuhan, kekecohan awam dan risiko peperangan yang mempunyai sifat, yang sama seperti kemalangan peribadi. Adalah penting juga untuk melihat peruntukan satu-satu fasal itu dan membezakannya dengan fasal lain bagi menentukan niat suatu fasal tertentu itu. Dengan menganalisis, ia akan menunjukkan bahawa pentafsiran plaintif tentang fasal 3 Jadual Kedua adalah bertentangan dengan peruntukan lain dalam Jadual Kedua MOU itu (lihat perenggan 19–21).]

Cases referred to

Ace Capital Ltd v CMS Energy Corporation [2008] EWHC 1843, QBD (refd)
Cott UK v F E Barber Ltd [1973] 3 All ER 540, HL (refd)
Doughty Hanson & Co Ltd n Roe [2007] EWHC 2212, Ch D (refd)
Farstad Supply AS v Enviroco Ltd [2010] UKSC 18, SC (refd)
George v Cluning (1979) 28 ALR 57, HC (refd)
SBJ Stepheson Ltd v Mandy [1999] EWHC 276, HC (refd)
Ward v Malaysian Airline System Bhd [1991] 3 MLJ 124, HC (refd)

Legislation referred to

Civil Law Act 1956 s 14(3)
Insurance Act 1996 s 2

Shivdev Singh (LH Singh & Co) for the plaintiff.
Kenneth Seet (Andrew Chiew Ean Vooi with him) (Lee Hishamuddin Allen & Gredhill)

Che Mohd Ruzima JC:

INTRODUCTION

[1] The plaintiff's action against defendant is based on an insurance claim for 'permanent disablement' benefit totalling RM468,792 which is said to be governed by the memorandum of understanding ('the MOU') entered into between Malaysia Airline Pilots' Association ('MAPA') and the defendant for the year 2007–2010 ('MOU 2007–2010').

[2] The defendant denied the claim and said that the plaintiff is not entitled to claim for personal accident insurance since the plaintiff's disablement did not arise from an accident and the term of his employment was governed by the MOU entered into between MAPA and the defendant for the year 2004–2007 ('MOU 2004–2007') and not MOU 2007–2010.

BRIEF UNDISPUTED FACTS

[3] The plaintiff was a former pilot rank as a captain employed by the defendant since 26 December 1991.

[4] The terms and conditions of the plaintiff's employment were based on the 'Terms and Conditions of Employment of Pilots' contained in MOU entered into between the defendant and MAPA and are reviewed and re-negotiated between the defendant and MAPA from time to time.

[5] The plaintiff was diagnosed with vertigo on 2 June 2006.

[6] Due to the illness suffered by the plaintiff, the Department of Civil Aviation ('DCA') issued a notice to permanently ground the plaintiff on 8 October 2007 and he was not allowed to fly as a pilot. Based on the DCA's notice, the permanent grounding took effect from 11 September 2007.

[7] On 9 October 2007, the defendant issued a three months' notice to terminate the plaintiff's employment following the DCA's decision to

permanently ground the plaintiff. On 8 January 2008, the plaintiff ceased his employment with the defendant.

[8] The plaintiff was at all times on medical leave before the defendant issued the notice of termination on 9 October 2007 and received salary up to six months in a year as provided for under MOU.

[9] The plaintiff was fully paid for his medical treatments in Malaysia and in London, United Kingdom (which included flight tickets to London).

[10] The plaintiff also had received a total of RM430,000 for loss of license benefit.

ISSUES

[11] Parties agreed that there are four issues to be determine as per bundle of document marked as G.

(a) whether the plaintiff is entitle to claim under cl 3.1 of the Second Schedule ('article 9') p 44 of the MOU 2007–2010;

(b) whether the plaintiff suffered from a permanent disablement during his employment with the defendant;

(c) in the event the plaintiff suffered from a permanent disablement during his employment with the defendant, whether the permanent disablement was result of an accident; and

(d) whether the last drawn salary of the plaintiff is RM16,985.22 or RM19,533.

DECISION

[12] The second and third issues are the main issues to be decided. As regard to the second issue, there is no definition of 'permanent disablement' in the MOU. I agree with the defendant's counsel that the ordinary meaning of these words should help. He referred to *The New Shorter Oxford English Dictionary* (Clarendon Press, Oxford, 1993), pp 682–2166 which defines:

(a) 'permanent' as an adjective which means 'continuing or designed to continue indefinitely without change ...'

(b) 'disablement' as a noun which means 'the action of disabling; the state of fact of being disable. The word 'disable' is in turn define as 'make incapable of action or use; deprive of physical or mental ability, especially through injury or disease.'

[13] Perusing the medical reports tendered before me, I agree that the plaintiff had made some improvement but the recovery can be slow and would need a long term treatment and rehabilitation. During the trial, I can observe that the plaintiff was alert and able to communicate without any problem. He also can move around freely without aid but at certain time he is in pain and sometime holding on his head. Assessing the plaintiff's present condition, I agree that plaintiff does not suffered from the physical permanent disablement.

[14] However, I am of the opinion that the permanent disablement suffered by the plaintiff in this case should be viewed in a different context. plaintiff used to be a pilot, so he needs his flying licence to fly again. Does the current state of the plaintiff or in the future warrants him to fly again? Based on the medical report and the evidence adduced before me, it is my considered view that he can't. Therefore his situation suit the ordinary meaning of 'permanent' 'disablement' as defined above. Since the plaintiff's employment govern by the MOU, the words 'permanent disablement' in cl 3 of the MOU should be interpreted in relation to the plaintiff's employment ie plaintiff will be permanently disable to fly again.

[15] Having decided on the issue of the permanent disablement of the plaintiff, now, I come to the third issue which is supposed to be the crux of the plaintiff's claim. The plaintiff claimed that he is eligible under the cl 3 of the Second Schedule ('article 9') of the MOU ('Second Schedule') to claim for the benefits of personal accident insurance claim which amounted to RM468,792. Upon comparing the two MOU, there is same provision provided under cl 3 of the MOU 2007–2010 and MOU 2010–2013. For easy reference the provision of cl 3 of the Second Schedule are as follows:

CLAUSE 3 — PERSONAL ACCIDENT INSURANCE

3.1 (a) A pilot employed by the Company with less than ten (10) years of service will be insured against death or permanent disablement as below:-

RANK	INSURANCE COVERAGE
Captain	RM430,000
First Officer/Second Officer	RM290,000

(b) A pilot employed by the Company with more than ten (10) years of service will be insured against death or permanent disablement twenty four (24) times his last drawn basic salary or as set out in table in sub-paragraph (a) of this Clause, whichever is greater.

3.2 Such insurance cover shall be on a twenty-four (24) hour basis and will include death or permanent disablement resulting from riots and civil commotion as well as war risks whether or not war has been declared.

3.3 The Company and MAPA will continue to explore an alternate scheme that will provide further value to the pilots without disadvantage to the Company. The Company and MAPA shall endeavour to implement the new scheme by 1st September 2007.

[16] The plaintiff had submitted that nowhere in the cl 3 of the Second Schedule stated clearly in a precise term that it relates to death or permanent disability resulting from an accident. It is only the heading of cl 3 of the Second Schedule that states 'PERSONAL ACCIDENT INSURANCE'. However heading do not give precise meaning or nature of the clause. One has to read the clause and it does not in any way suggest that it relates to accident matters.

[17] Defendant disagreed and submitted that it is erroneous and distorted interpretation of the contractual provision when plaintiff appears to be completely ignore the heading of cl 3 of the Second Schedule in making the claim. When cl 3 of the Second Schedule is read in its entirety, it is obvious that a pilot is entitle to claim this insurance benefit when he suffers permanent disablement as a result of personal accident (the case of *Cott UK v F E Barber Ltd* [1973] 3 All ER 540; *SBJ Stepheson Ltd v Mandy* [1999] EWHC 276; *Doughty Hanson & Co Ltd n Roe* [2007] EWHC 2212; *Ace Capital Ltd v CMS Energy Corporation* [2008] EWHC 1843; *Farstad Supply AS v Enviroco Ltd* [2010] UKSC 18; and *George v Cluning* (1979) 28 ALR 57 was referred).

[18] I agree with the defendant's counsel that in interpreting the contractual provision the entire clause should be read together, including the heading. Besides that the court has to look at the individual clause and distinguish it with other clauses. The court even has to distinguish between the meaning of individual words and the meaning of a document as a whole. Heading of a clause is normally used as a catchword, or a form of identification, or inserted for convenience of reference. But sometime the heading can be used as guidance to ascertain the meaning of the clause. Therefore I am of the opinion that the weight to be given to the heading of a clause depend on the construction of the provision in that particular clause.

[19] Back to the provision of the MOU, the Second Schedule under article 9 of the MOU deal with the 'Service Benefits and Allowance' for the pilots. The heading of cl 3 of the Second Schedule is 'PERSONAL ACCIDENT INSURANCE'. It follows by the following provisions; '... A pilot employed by the Company with less than ten (10) years of service *will be insured against death or permanent disablement* ...' (Eemphasis added.) Upon plain reading of the provision, can we say that the following provision after the heading does not have any connection with the heading? The answer to me is of course we have to consider the heading to determine the scope of the insurance coverage in its main provision. The insurance to my view, is to insured the pilot from the

death or permanent disablement suffered out of any personal accident. If we have to follow the plaintiff's argument by ignoring the heading, does that provision have any specific meaning? My answer is no. It will means that the legal personal representative or the pilot can claim the sum insured for any cause of death or the permanent disablement suffered by the pilot. This interpretation will of course contradict with other provision of the Second Schedule of the MOU which I will discuss later. What I can observe is that the clause should has a different heading, that is, 'LIVE AND PERMANENT DISABLEMENT INSURANCE' if we were to accept the plaintiff's argument.

[20] Besides that, the provision of para 3.2 of the Second Schedule can illustrate further the relevance of the heading in cl 3. The insurance cover shall be on a 24 hour basis and this shows that personal accident can happen at any time. Further it provides that in certain situation the insurance will extend its coverage to the death or permanent disablement resulting from riots, civil commotion and war risks which in my view had in nature, have resemblance to the personal accident.

[21] As I had mention earlier it is also pertinent to look at the provision of individual clause and distinguish it with other clauses to determine the intention of that particular individual clause. By analysing them, it will show that the plaintiff's interpretation of cl 3 of the Second Schedule will contradict with other provision of the Second Schedule of the MOU. First, I would like to refer to the provision of cl 2 of the Second Schedule which provide the following provision:

> CLAUSE 2 — GRATUITY SCHEME FOR A PILOT WHO DIES WHILST IN THE SERVICE OF THE COMPANY
>
> 2.1 The following benefits will, subject to the provisions of paragraph 2.3 of this Clause, be payable in respect of any pilot who dies whilst in the service of the Company:
>
> (a) Six (6) months' last drawn basic salary in respect of a pilot who has more than one (1) year's continuous service with the Company:
>
> (b) (i) a further to one (1) month's basic salary for each completed year of service as a pilot up to a maximum of twenty-four (24) months' basic salary.
>
> (ii) in any case where a pilot has not been employed by the Company as a pilot for twenty-four (24) years, but has been employed in some other capacity by the Company prior to being employed as a pilot, then the payments under sub-paragraph 2.1 (b) (i) will be made for the number of years he has served as a pilot, and, for the remaining period of his service with the Company not as a pilot, payments under subparagraph 2.1 (b) (i) will be based on the last drawn basic salary received in the capacity he was

employed prior to being employed as a pilot by the Company:

2.2 The legal personal representative of a pilot who dies as a result of injuries will be entitled to receive either the benefits under Clause 3 of this Schedule or the benefits under sub-paragraph (a) and (b) or paragraph 2.1 of this Clause, whichever is the greater.

2.3 The benefits set out in sub-paragraph (a) and (b) of paragraph 2.1 of this Clause shall not be payable in the case of a pilot who:

(a) Has, at the time of his death, reached retirement age in accordance with the provisions of Clause 22 of the First Schedule whichever the case maybe.

(b) Dies as a result of or arising from causes enumerated in paragraph 11.4 of Clause 11 of the First Schedule.

2.4 The Company or the Association shall be entitled to review the whole gratuity scheme for pilots who die whilst in the service of the Company as provided for in this Clause, as and when a statutory scheme for such a purpose is introduced in Malaysia.

This clause clearly provides fora gratuity scheme which is equivalent to benefit of a life insurance. It covers any pilot who dies while in the service with the defendant. It also provides that the legal personal representative of a pilot who dies as a result of injuries will be entitle to receive either the benefits under this clause or under cl 3 of Second Schedule, whichever is the greater. Taking into consideration of the option given under sub-cl 2.2 above and the whole intention of having the gratuity scheme, it will shows that the provision of cl 3 of the Second Schedule is only limited to the claim for the death suffered from personal accident only as stated in the heading.

[22] Next, we have to look at the provision of the cl 6 of the Second Schedule. For benefit of comparing those clauses, cl 6 of the Second Schedule is as follows:

CLAUSE 6 — LOSS OF LICENCE INSURANCE

6.1. The Company will effect, at its own expense, insurance on behalf of each pilot in its employ against loss of license on medical grounds.

6.2 The insurance cover to be provided under paragraph 6.1 will be as below:

(a) A pilot employed by the Company with less than ten (10) years of service will be insured as below:

RANK	INSURANCE COVERAGE
Captain	RM430,000
First Officer/Second Officer	RM290,000

provided that the Company shall not be bound to effect such cover if such cover is not obtainable in the London market in which event, the Company will effect insurance cover up to such maximum sum as is available.

(b) A pilot employed by the Company with more than ten (10) years of service will be insured 24 (twenty-four) times his last drawn basic salary or as set out in sub-paragraph (a) of this Clause, whichever is greater.

6.3 The Company and MAPA will continue to explore an alternate scheme that will provide further value to the pilots without disadvantage to the Company. The Company and MAPA shall endeavour to implement the new scheme by 1st September 2007.

Here, the defendant at its own expenses has to insure all pilot employed by them against the loss of license on medical grounds. Again, in my view this provision also demonstrate that the provision of cl 3 of the Second Schedule can be clearly distinguishable with other clauses in determining its intention. I am of the view that the plaintiff's claim which is base on the ground of permanent disablementdue to an illness only falls under this category.

[23] To summarise the intention of the individual clauses which I had discuss above, cl 2 of the Second Schedule will cover all claim related death of any pilot while in the service. Clause 3 of the Second Schedule is specifically to suit all claims for death or permanent disablement based on personal accident and cl 6 of the Second Schedule designed for the pilot to make a claim for loss of his license on medical grounds.

[24] Besides that, in the context of interpreting the provision of the MOU, it is also necessary to look at the background of the document to decide what the parties using the words in question would reasonably have meant by them. According to the preamble, the main purpose of the MOU is to conclude all matters in respect of salaries and terms and conditions of employment of pilots employed by the defendant. The MOU had been discussed and agreed upon. Article 9 of the MOU refer to the Second Schedule which deals with the 'Service Benefits and Allowance' for the pilots. Each and every clause of the Second Schedule including the words use in the heading should have its own meaning to suit its function. Therefore the background of the MOU is also relevant in deciding whether, in fact, the parties used the heading is just merely for the purpose of convenience of reference or otherwise. I am of the opinion that in interpreting cl 3 of the Second Schedule the heading of the clause has to be taken into consideration in order to determine the claim that can be made under the provision.

[25] It is pertinent to note that, for the purpose of interpreting cl 3 of the Second Schedule as a whole, the words used should be given their natural and

ordinary meaning. It is crystal clear that from the literal interpretation of the words used in the clause, the words 'death and permanent disablement' should relates only to personal accident as stated in the heading of the clause.

[26] In relation to the plaintiff's claim, the case of *Ward v Malaysian Airline System Bhd* [1991] 3 MLJ 124 was referred to justify the claim for both benefit under cll 3 and 6 of the Second Schedule. In that case, Captain Ward was injured during the emergency landing when the aircraft piloted by him develops engine trouble and he suffered permanent disablement due to head injury. The defendant admitted 100% liability. The defendant had taken out and paid for insurance for (a) injury to the plaintiff and (b) loss of pilot's licence. The money from the insurance had been paid to the plaintiff. From the facts of the case it is clearly shows that Captain Ward was entitle to claim for both insurance since he suffered permanent disablement due to the head injury which was cause by a personal accident. Here, the plaintiff does not involve with any personal accident. His permanent disablement is purely because of his illness. Therefore he is only entitle to claim for loss of licence in which he had been paid for.

[27] The plaintiff also referred to sub-s 14(3) of the Civil Law Act 1956 for the meaning of 'personal injury' and s 2 of the Insurance Act 1996 for the definition of 'personal accident policy' and submitted that personal accident policy does not only relate to an accident but also where the party is incapacitated in consequence of a disease. With respect, I cannot agree with the submission. I am of the view that we are dealing with a specific MOU in hand. The interpretation of the provision in the MOU should falls squarely within the scope of the MOU since that there is no indication that the parties had intention to refer to any provisions of any law in the MOU.

[28] To complete my decision, I will summarise my opinion on the first and the fourth issues. For the first issue, it is my considered view that the plaintiff is subjected to the MOU 2007–2010 in making his claim. I said so because of a simple reason that the new MOU was signed on 18 September 2008 but has a retrospective effect from 1 September 2007 by virtue of article 6.1 of the MOU 2007–2010. Plaintiff was permanently grounded from 11 September 2007. Three months' notice of termination was given to the plaintiff on 9 October 2007 and on 8 January 2008 the plaintiff ceased his employment with the defendant. All the relevant dates, from decision to ground him and up to the final day of his employment are well within the preview of the new MOU 2007–2010. Base on that finding, the first issue is also settle where the last drawn salary of the plaintiff should be RM19,533 base on the revise salary scheme under the MOU 2007–2010.

CONCLUSION

[29] For all the foregoing reasons on balance of probabilities, I find that the plaintiff has not proven his claim against the defendant and the claim is dismiss with costs fix at RM15,000.

Claim dismissed with costs of RM15,000.

Reported by Afiq Mohamad Noor